

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 72 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BAROT KIRITBHAI BALABHAI

Versus

PATEL HIRABHAI SAVJIBHAI

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Appearance:

MR MC BAROT for Petitioners

MR SK PATEL for Respondent No. 1, 2, 3, 4

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 02/03/98

ORAL JUDGEMENT

Rule. Mr S K Patel, learned Advocate waives service of Rule for respondents.

I have heard the learned Advocates for the parties. Having read the impugned order, I find that both the Courts below have relied on a panchnama and statements recorded by the Talati of the Village in addition to the

certain documents. The judgment does not show how the affidavit filed by the plaintiff has been considered. It further appears that the panchnama was prepared by the Talati in absence of the plaintiff. If there was any doubt with respect to the petition, the court could have appointed Court Commissioner, but the Court has adopted a wrong procedure in emphasising much on the panchnama prepared by the Talati and the statements recorded by the Talati. There is an apparent error in exercising the jurisdiction by both the Courts below.

2. In view of the aforesaid, this Revision Application is allowed. The impugned order dated 5.1.1998 passed by the 4th Extra Assistant Judge, Himatnagar and the order dated 11.12.1997 passed by the Civil Judge (JD), Modasa below Exh.6 in RCS No.169/97 are hereby quashed. The Civil Judge (JD), Modasa is directed to decide the application Exh.6 after hearing the parties. A joint statement has been made by the learned Advocates for the parties that a direction may be given for appointment of Court Commissioner for inspection of the site. The Court may appoint Court Commissioner for inspection of the site to know which party is in possession of the subject-land.

Rule made absolute to the aforesaid extent.

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msp.